

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/380,211	11/08/99	SIMMONS	E 000500-195

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EXAMINER

KIDWELL, M

ART UNIT

PAPER NUMBER

3761

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DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/380,211	SIMMONS ET AL.
	Examiner Michele M. Kidwell	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 June 2001.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 7-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 November 1999 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed July 28, 2000 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

Additionally, three references Francheschi (FR 2 636 837 A1), Amino et al (US 5,413,610) and Masse (EP 0 666 069 A1) have been submitted with the information disclosure statement submitted November 22, 1999. These references have not been listed on the form PTO 1449. Further, these references relate to artificial hip joints. It is not clear how these references relate to the present application and the Examiner is unsure if these references have been intentionally submitted for consideration in light of the present application. Accordingly, these references have been placed in the application file, but the information referred to therein has not been considered.

Specification

The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

Art Unit: 3761

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

Claim Objections

Claim 16 is objected to because of the following informalities: the applicant should remove either the word "the" or the word "said" in lines 3 – 4. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 – 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said abutment skin part" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said abutment skin part" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 7 – 12 and 16 – 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Schulte et al. (US 6,156,024).

Regarding claim 7, Schulte et al. (hereinafter referred to as Schulte) discloses an absorbent article with longitudinally extending side extremities (20), an absorbent body (44) disposed between a liquid-impermeable bottom sheet (42) and a liquid-permeable upper sheet (38) and at least one longitudinally extending elastic liquid barrier (62) of essentially liquid-impervious material (col. 11, lines 28 – 31) and fastened to the upper or bottom sheet along or adjacent a side extremity (figures 3 and 4) and having a free sealing edge (66) facing towards a wearer wherein at least the sealing edge is treated with a non-adhesive sealing medium which, in use, at least partly fills out any through-penetrating pores which are formed between the sealing edge and an abutment part of a wearer's skin and/or which, when the article is donned, smears the abutment skin part

and thereby increases a liquid-skin wetting angle as set forth in col. 1, line 23 to col. 2, line 13.

With reference to claim 8, Schulte teaches the article wherein the sealing edges are coated with a sealing medium in an amount sufficient to smear the abutment part as set forth in col. 2, lines 4 – 16. Additionally, Schulte has disclosed that it is known that liquids can leak through the barrier cuffs (col. 1, line 66 to col. 2, line 1) and that the object of the Schulte invention is provide a diaper having lotioned leg cuffs that provide desired therapeutic benefits (col. 2, line 56 – 59) and improved containment properties (col. 2, lines 65 – 67). Further, since the structure of Schulte provides a diaper with sealing edges coated with a sealing medium that is identical to the structure as claimed by the applicant, it should be understood that the structure of Schulte is considered fully capable of providing the function (i.e., sealing medium in an amount sufficient to partly fill out any pores) as claimed by the applicant.

As to claims 9 – 12, Schulte discloses an article with the sealing medium applied in the claimed amounts as set forth in col. 25, lines 40 – 45.

With respect to claim 16, Schulte teaches the article wherein the sealing medium is essentially rigid and viscous at room temperature and sufficiently fluid at body temperature to smear the skin of the wearer as set forth in col. 15, line 38 to col. 16, line 3.

As to claim 17, Schulte discloses the sealing medium to be petrolatum as set forth in col. 17, lines 13 – 26.

With reference to claim 18, Schulte discloses an absorbent article with longitudinally extending side extremities (20), an absorbent body (44) disposed between a liquid-impermeable bottom sheet (42) and a liquid-permeable upper sheet (38) and at least one longitudinally extending elastic liquid barrier (62) of essentially liquid-impervious material (col. 11, lines 28 – 31) and fastened to the upper or bottom sheet along or adjacent a side extremity (figures 3 and 4) and having a free sealing edge (66) facing towards a wearer wherein at least the sealing edge is treated with a non-adhesive sealing medium which, in use, at least partly fills out any through-penetrating pores which are formed between the sealing edge and an abutment part of a wearer's skin and/or which, when the article is donned, smears the abutment skin part and thereby increases a liquid-skin wetting angle as set forth in col. 1, line 23 to col. 2, line 13. Additionally, see the rejection of claim 8.

Regarding claim 19, see the rejection of claim 8.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 – 15, as best understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulte et al. (US 6,156,024).

With reference to claims 13 – 15, the applicant has disclosed on page 14 of the specification that petrolatum is a suitable sealing medium. Schulte discloses the use of petrolatum in col. 17, lines 13 – 26. It can be reasonably assumed that the petrolatum would provide a sealing member meeting the wetting angle requirements of the claimed invention. Likewise, it would be obvious that the petrolatum would provide results similar to any other sealing member disclosed by the applicant, since the applicant has acknowledged that petrolatum is a suitable ointment.

Claims 20 – 21, as best understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulte et al. (US 6,156,024) and in further view of Sivilich (US 5,669,902).

The difference between Schulte and claim 20 is the provision that the absorbent article include an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body, and includes apertures intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet.

Sivilich teaches an absorbent article including an essentially liquid-impermeable top sheet (30) which is intended to lie against the wearer and which includes elastic for shaping the article to the wearer's body (figure 4 and abstract) and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the topsheet as set forth in figure 4.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Schulte by employing an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body, and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet because the inclusion of such retains the garment in intimate contact with the body as taught by Sivilich in col. 1, lines 63 – 67.

Similarly, the use of apertures as opposed to an aperture would have been an obvious modification since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Schulte provides the general concept of providing lotion on the elastic edges that come into contact with the wearer's skin in order to alleviate chafing and provide improved containment. Therefore, it would have been obvious to one of ordinary skill in the art to coat any elastic member that comes into contact with the wearer's skin with the composition as taught by Schulte.

As to claim 21, see the rejection of claim 8.

Response to Arguments

Applicant's arguments filed June 12, 2001 have been fully considered but they are not persuasive.

In response to the applicant's argument that Schulte teaches that the lotion should be applied to the surface of the leg cuffs, not the edges, the examiner has noted that the edges as claimed by the applicant corresponds to the distal edge (66) of Schulte as seen in figure 4. The only requirement of the "edges" as claimed by the applicant is that that the edge have a free side facing towards the wearer. Schulte discloses this in figure 4. Likewise, Schulte discloses that both the inner and outer surface (essentially the entire structure) of the barrier leg cuff may be coated with the lotion composition as set forth in col. 16, lines 7 – 19.

In response to applicant's argument that Schulte does not teach or describe the use of a sealing medium on the sealing edge or edges of a liquid barrier which sealing member at least partly fill out any through-penetrating pores which are formed between the sealing edge or edges and the wearer's skin, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to the applicant's argument that Schulte teaches away from such a sealing medium by teaching the use of an immobilizing agent which immobilizes the emollient on the diaper leg cuff to which the lotion composition is applied, the examiner would like to redirect the applicant to col. 2, lines 4 – 16 where Schulte discloses that

the lotion is transferable to the wearer's skin by normal contact, wearer motion and/or body heat.

In response to the applicant's argument that Schulte does not teach wetting angles, the examiner would like to redirect the applicant to the rejection of claims 13 – 15.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0858.

Michele Kidwell

Michele Kidwell
September 10, 2001

